

**FILED**

**MAY 19 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

SULEIMAN ABD MAGED QAZZA,

Petitioner - Appellant,

v.

B. WAGNER,

Respondent - Appellee.

No. 05-55297

D.C. No. CV-04-01089-DSF

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Central District of California  
Dale S. Fischer, District Judge, Presiding

Submitted May 15, 2006<sup>\*\*</sup>

Before: B. FLETCHER, TROTT and CALLAHAN, Circuit Judges.

California state prisoner Suleiman Abd Maged Qazza appeals from the district court's judgment dismissing his 28 U.S.C. § 2254 petition for containing unexhausted claims. We have jurisdiction pursuant to 28 U.S.C. § 2253.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Qazza contends that the district court incorrectly dismissed his petition as containing unexhausted claims because it incorrectly determined that he failed to respond to its order to show cause. We agree. A review of the record reveals that, prior to the district court's order dismissing his petition, Qazza did in fact submit evidence to establish that he had exhausted all of the claims. We therefore vacate the judgment and remand to the district court for further proceedings.<sup>1</sup>

**VACATED and REMANDED.**

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<sup>1</sup>All pending motions are denied as moot.